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HUMBOLDT BAYKEEPER

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

HUMBOLDT BAYKEEPER, a California non-  
profit association,

Plaintiff,

v.

CALIFORNIA REDWOOD COMPANY, a  
California corporation,

Defendant.

**Civil Case No.:** 4:16-cv-06970-HSG

**~~Proposed~~ CONSENT DECREE**

**(Federal Water Pollution Control Act, 33  
U.S.C. §1251 et seq.)**

1 **CONSENT DECREE**

2 The following Consent Decree is entered into by and between Plaintiff Humboldt Baykeeper  
3 and Defendant California Redwood Company. The entities entering into this Consent Decree are  
4 collectively referred to as “the Parties.”

5 **WHEREAS**, Humboldt Baykeeper (“Baykeeper” or “Plaintiff”) is a non-profit association  
6 organized under the laws of the State of California, dedicated to the protection, enhancement, and  
7 restoration of Humboldt Bay, the Humboldt Bay Watershed and the water bodies within the  
8 Humboldt Bay Watershed.

9 **WHEREAS**, Defendant, California Redwood Company, is a corporation duly organized  
10 and existing under the laws of the State of California (“CRC” or “Defendant”).

11 **WHEREAS**, Defendant is the owner and operator of two (2) facilities located in Humboldt  
12 County near Eureka, California, (collectively “the Facilities”):

13 (1) The CRC Chip Facility is a 16-acre site used to receive, store, and load wood chips for  
14 shipping (“Chip Facility”) located at 405 Bay Street, Fairhaven, CA 95564, with the Waste Discharge  
15 Identification (“WDID”) number of 1 12I023751. Industrial activities at the Chip Facility fall under  
16 Standard Industrial Classification (“SIC”) Code 2421 – Sawmills and Planing Mills, General; and

17 (2) The CRC Samoa Facility is a 60-acre site primarily used to store logs, with wood chippers  
18 occasionally used onsite (“Samoa Facility”) located at #1 Jimmy Smith Drive south of the community of  
19 Samoa in Humboldt County, CA 95564, with the Waste Discharge Identification (“WDID”) number of 1  
20 12I020584. Industrial activities at the Samoa Facility fall under SIC Code 2421– Sawmills and Planing  
21 Mills, General.

22 **WHEREAS**, storm water discharges associated with industrial activity at the Facilities are  
23 regulated pursuant to the National Pollutant Discharge Elimination System (“NPDES”) General Permit  
24 No. CAS000001 [State Water Resources Control Board], Water Quality Order No. 2014-57-DWQ  
25 (“Storm Water Permit”), and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq. (“Clean  
26 Water Act” or “CWA”), Sections 301(a) and 402, 33 U.S.C. §§ 1311(a), 1342.

1           **WHEREAS**, Baykeeper contends that Defendant's operations at the Facilities result in  
2 discharges into Humboldt Bay (the "Receiving Waters") and contends that those discharges are  
3 regulated by the Clean Water Act, Sections 301(a) and 402, 33 U.S.C. §§ 1311(a), 1342;

4           **WHEREAS**, on September 27, 2016, Baykeeper served Defendant, the Administrator of the  
5 U.S. Environmental Protection Agency ("EPA"), the Executive Director of the State Water Resources  
6 Control Board ("State Water Board"), the Executive Officer of the North Coast Regional Water Quality  
7 Control Board, ("Regional Board"), and the Regional Administrator of EPA Region IX, with a notice of  
8 intent to file suit ("60-Day Notice") under Section 505(b)(1)(a) of the of the Clean Water Act, 33 U.S.C.  
9 § 1365(b)(1)(A), alleging violations of the Clean Water Act and the Storm Water Permit and its previous  
10 version, Water Quality Order No. 92-12-DWQ (as amended by Water Quality Order 97-03-DWQ), at  
11 the Facilities (a true and correct copy of Baykeeper's 60-Day Notice is attached as **Exhibit A** and  
12 incorporated herein by reference);

13           **WHEREAS**, on December 5, 2016, Baykeeper filed a complaint against Defendant alleging  
14 Defendant is in violation of the substantive and procedural requirements of the Storm Water Permit and  
15 the Clean Water Act;

16           **WHEREAS**, Defendant denies all allegations and claims contained in the 60-Day Notice and the  
17 Complaint and reserves all rights and defenses with respect to such allegations and claims;

18           **WHEREAS**, the Parties have agreed that it is in their mutual interest and choose to resolve in  
19 full Baykeeper's allegations in the 60-Day Notice and Complaint through settlement and avoid the cost  
20 and uncertainties of further litigation;

21           **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING**  
22 **PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:**

23           **1.** For the purposes of this Consent Decree, the Parties agree: 1) the Court has jurisdiction over the  
24 subject matter of this action pursuant to Section 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. §  
25 1365(a)(1)(A); 2) venue is appropriate in the Northern District Court pursuant to Section 505(c)(1) of  
26 the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the Facilities at which the alleged violations took  
27 place are located within this District; 3) the Complaint states claims upon which relief may be granted  
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1 against Defendant pursuant to Section 505 of the Clean Water Act, 33 U.S.C. § 1365; 4) Plaintiff has  
2 standing to bring this action; and 5) the Court shall retain jurisdiction over this matter for purposes of  
3 interpreting, modifying, or enforcing the terms of this Consent Decree for the life of the Consent Decree,  
4 or as long thereafter as is necessary for the Court to resolve any motion to enforce this Consent Decree.

## 5 **OBJECTIVES**

6 **2. Compliance with General Permit and Clean Water Act.** It is the express purpose of the  
7 Parties entering into this Consent Decree that throughout the Term of this Consent Decree, which is  
8 defined below in Paragraph 4, Defendant shall commence all measures needed to operate the Facilities  
9 in full compliance with applicable requirements of the Storm Water Permit, and the Clean Water Act,  
10 subject to any defenses available under the law. All actions taken by Defendant pursuant to this Consent  
11 Decree shall be made in compliance with all applicable Federal and State laws and local rules and  
12 regulations.

## 13 **EFFECTIVE DATE, AND TERM OF CONSENT DECREE**

14 **3. Effective Date.** The Effective Date of this Consent Decree shall mean the last day for the  
15 Federal Agencies to comment on the Consent Decree, i.e., the forty-fifth (45th) day following the  
16 Federal Agencies' receipt of the Consent Decree, or the date on which the Federal Agencies provide  
17 notice that they require no further review, whichever occurs earlier.

18 **4. Term.** The Term of this Consent Decree shall cover four (4) complete Wet Seasons<sup>1</sup> following  
19 the implementation of the Best Management Practices ("BMPs") set forth in Paragraphs 6.1 through  
20 6.11 below, with the exception of the Treatment BMPs (*see* Paragraphs 6.1 and 6.2) at the Chip Facility  
21 that may require permitting, plumbing, and installation, and thus additional time to implement. Should  
22 an Action Plan be required per Paragraphs 5 and 14, below, based on sampling results from the 2019-  
23 2020, or 2020-2021 reporting years<sup>2</sup>, the Consent Decree will terminate upon complete implementation  
24 of the measures described in the Action Plan. Should no Action Plan be required as described above, or  
25 implementation of the BMPs required in the Action Plan are complete, the Term of this Consent Decree  
26 shall run from the Effective Date until May 31, 2021.

27  
28 <sup>1</sup> The "Wet Season" includes October 1st through May 31.

<sup>2</sup> A reporting year is July 1 to June 30.

**COMMITMENTS OF DEFENDANT**

**5. BAT/BCT and Benchmark-Based Limits.** If Defendant receives storm water sampling data demonstrating two or more exceedances of the same Table 1 Parameter Limit at either of the Facilities during one reporting year within the term of this Consent Decree, or fails to comply with any of the requirements of the Storm Water Permit, Defendant shall provide Baykeeper with an Action Plan for that Facility in compliance with the “Action Plan” requirements set forth below in Paragraphs 12 and 14 of this Consent Decree.

**Table 1: Limits for Storm Water Discharges**

<b>Contaminant</b> (All metals are total recoverable)	<b>Limit</b> (all but pH in mg/L)	<b>Source of Limit</b>
pH	6.0-9.0 s.u.	2008 EPA Benchmark
Zinc	0.26 mg/L	2008 EPA Benchmark
Chemical Oxygen Demand	120 mg/L	2008 EPA Benchmark
Oil & Grease	15 mg/L	2008 EPA Benchmark
Total Suspended Solids	100 mg/L	2008 EPA Benchmark

**6. Best Management Practices.** In addition to maintaining the current BMPs at the Facilities, within ninety (90) days of the Effective Date, unless otherwise noted, Defendant shall submit permit applications necessary (if any) to implement BMP upgrades identified herein as Exhibit C, to comply with the provisions of the Consent Decree, the Storm Water Permit and the Clean Water Act. Specifically, Defendant shall develop and implement BMPs to reduce and/or prevent contamination in storm water discharges from the Facilities consistent with the use of the BAT and the BCT and in compliance with applicable water quality standards (“WQS”).

**CHIP FACILITY:**

**6.1** Discharges at SW-1S and SW-1N require treatment. Defendant will install treatment media into the above-ground storm water conveyance swales to chemically treat pH, and provide activated carbon or other appropriate filtration media to address Chemical Oxygen Demand (“COD”). This initial structural BMP treatment solution is described in Exhibit B incorporated by reference herein. If monitoring results demonstrate two or more exceedances of the same Table 1

1 Parameter Limit in any reporting year during the Term of this Consent Decree, Defendants shall  
2 upgrade the system to include above-ground treatment as described in Exhibit C incorporated by  
3 reference herein, or an equivalent or better alternative if available. Permit applications for  
4 implementation of Exhibit C (if any) will be submitted to applicable agencies within thirty (30)  
5 days of decision to implement. Construction of Exhibit C solution will be completed within ninety  
6 (90) days of receipt of final permit approval. Defendant shall provide Baykeeper with all final  
7 permitting applications within fifteen (15) days of submission, and all permitting notices on  
8 progress from all applicable agencies within fifteen (15) days of receipt from any agency.

9 **6.2** By no later than October 15, 2017, Defendant shall have installed the treatment solution  
10 described in Exhibit B. If monitoring results demonstrate two or more exceedances of the same  
11 Table 1 Parameter Limit in any reporting year during the Term of this Consent Decree, Defendant  
12 agrees to install, prior to October 15, of the next reporting year, an upgraded, fully operational  
13 Treatment solution (Exhibit C, or an equivalent or better treatment solution if available) at SW-1S  
14 and SW-1N, resulting in effectively treated storm water discharge. If as a result solely of delay  
15 caused by regulatory agencies or other factors beyond Defendant's control subject to the force  
16 majeure provisions in Paragraph 40, Defendant is unable to install and operate the upgraded  
17 Treatment solution by October 15, of the next reporting year, the Parties shall confer regarding the  
18 status of the Consent Decree, including but not limited to, the possibility of extending the time to  
19 install an upgraded, fully operational Treatment solution (Exhibit C or an equivalent or better  
20 alternative) by an additional three (3) months.

21 **6.3** Within Drainage Area 1, storm water drains west toward the Electrical Yard, resulting in  
22 discharge that is not currently sampled. Storm water runoff from the chip pile in the location north  
23 of the scale, will be stopped by removing pavement from an area of suitable size to allow full  
24 infiltration. This area will be created by removing pavement from an area approximately 3 feet  
25 wide and the length of the fence line north of the scale, and backfilling with open graded gravel.  
26 An additional infiltration area will be created in the low corner located west of the scale in the  
27 same manner, suitable to allow full infiltration of storm water prior to discharge from the site. Both  
28

of these new infiltration areas will be added to the SWPPP as monitoring and potential sampling points if necessary during heaving storms.

**6.4** Defendant shall ensure that all vehicle maintenance will be done under a roofed structure.

**6.5** Defendant shall implement a chip rotation schedule such that no chips are left on-site for longer than 12 months, and to remove heavily degraded chips from the bottom of the pile when ships are loaded, rather than maintaining them for extended periods of time as an “operational blanket” layer. Defendant has executed export contracts not available until recently, which allow them to commit to this Operational BMP, not previously possible for the startup operation.

**6.6** Defendant shall update the SWPPP in accordance with Paragraphs 6.1, through 6.5, and shall update the SWPPP map to adequately represent proper drainage flows from all drainage areas at the Chip Facility.

**SAMOA FACILITY:**

**6.7** Defendant shall remove and properly dispose of all boneyards, including but not limited to, all oxidized iron associated with rusted former infrastructure of the former Planing Mill. Defendant shall also tear down the wind damaged cooling shed and remove and properly dispose of all metal and other materials associated with the tear down.

**6.8** Defendant shall identify and plug the numerous DIs in Drainage Area 1 and the former Planing Mill area that are not identified in the current SWPPP map.

**6.9** Defendant shall demonstrate on-site storm water containment and discharge reduction measures in the area immediately up-gradient of the SW-1 discharge sampling point. The Defendant has established a storm water infiltration/retention area up-gradient of the SW-1 sampling point. Additional improvements in this area will be implemented to significantly reduce the likelihood of off-site discharges. The SW-1 sampling point shall be repositioned to the east to match the actual eastern property boundary alignment and an additional containment berm, which will increase storm water capacity. A weir-notch discharge point will be installed in the berm. The Defendant shall update the SWPPP to reflect these changes and monitor this location on an ongoing basis to document that discharge does not leave the site during most rain events. This



location shall be subject to ongoing monitoring and photo documentation to confirm no discharge; however, during rare occasions of extreme precipitation this point would be sampled in accordance with Storm Water Permit requirements if off-site discharge occurs. Defendant shall include monitoring and photo documentation with the documents provided to Baykeeper in accordance with Paragraph 18 below.

**6.10** Defendant intends to utilize the full paved portion of Drainage Area 2 for log storage and chipping. Defendant will install new asphalt berms to direct storm water discharge that does not flow to SW-1 to un-paved vegetated infiltration areas. The updated SWPPP map will confirm and identify all areas of log storage and wood chipping at the Samoa Facility.

**6.11** Defendant shall update the SWPPP in accordance with Paragraphs 6.7 through 6.10.

**7. Modification of BMPs.** Defendant shall not unilaterally abandon or modify any of the BMPs described above unless necessary to maintain or maximize storm water system or BMP performance. Defendant shall provide notice to Baykeeper within ten (10) business days of making the change, which includes a description of the change and explanation of why the change was needed to improve or maintain storm water quality or system performance. This notice requirement does not include normal BMP maintenance, replacement or minor adjustments. Baykeeper shall provide comments regarding Defendant's modifications or abandonment of any BMP at the Facilities, if any, within ten (10) days of receipt. Any failure to comment on the proposed modifications by Baykeeper, shall not be deemed to constitute agreement with the proposals or be deemed to construe a waiver of any of Baykeeper's rights or remedies under this Consent Decree. Consultation pursuant to this section shall not constitute an action plan as described in Paragraph 14 of this Consent Decree, or be deemed to waive any of Defendant's obligations with respect to the Action Plan.

**8. Visual Observations.** During the life of this Consent Decree, Defendant shall conduct visual observations at each discharge location during every Qualifying Storm Event(s) ("QSE")<sup>3</sup> that produces a discharge that occurs during scheduled operating hours at each of the Facilities.

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<sup>3</sup> "Qualifying Storm Events" under the Storm Water Permit are those events in which (i) the samples taken are preceded by at least three (3) working days during which no storm water discharges from the Facility have occurred; (ii) the samples are collected within the first hour that flow is observed; and (iii) the samples are collected during scheduled facility operating hours.



1       **9. Employee Training Program.** Defendant shall develop and implement an employee training  
2 and reporting program that includes: 1) annual meetings of the Storm Water Pollution Prevention Team,  
3 held within twenty (20) days between prior to the start of the Wet Seasons (October 1), and again within  
4 the month of February, so as to ensure the capturing of the first event and subsequent storm events in its  
5 sampling analysis as well as to ensure that the monthly Wet Season visual monitoring is properly  
6 conducted and reported in the Annual Report; 2) Defendant shall train all employees responsible for  
7 SWPPP implementation and/or monitoring on the BMPs included in this Consent Decree and the  
8 SWPPP to ensure that BMPs are implemented effectively and on schedule and structural BMPs are  
9 maintained properly. Defendant shall train individual employees on their specific responsibilities in  
10 implementing BMPs. The training must include proper handling (collection, storage and disposal) of all  
11 potential pollutant sources at the Facilities; and 3) Defendant shall train all employees at the Facilities on  
12 the Storm Water Permit's prohibition of non-storm water discharges, so that employees know what non-  
13 storm water discharges are, that non-storm water discharges can result from improper surface washing  
14 or dust control methods, and how to detect and prevent non-storm water discharges.

15       **10. Storm Water Pollution Prevention Plan.** Within sixty (60) days of the Effective Date,  
16 Defendant shall amend the Facilities' SWPPPs to incorporate the requirements and BMPs set forth in  
17 Section X of the Storm Water Permit and Paragraphs 6.1 through 6.11 of this Consent Decree, and  
18 submit the updated SWPPPs to Baykeeper within ten (10) business days thereafter. Baykeeper shall  
19 have thirty (30) days from receipt of an amended SWPPP to propose any changes to the SWPPP. Within  
20 thirty (30) days of notification by Baykeeper of any proposed changes to a SWPPP, Defendant shall  
21 make all of Baykeeper's changes to the amended SWPPP, or shall justify in writing why any comment is  
22 not incorporated. Defendant shall not be obligated to incorporate any of the SWPPP changes Baykeeper  
23 may recommend (subject to dispute resolution in Paragraphs 23 and 24), but shall give good faith  
24 consideration to those measures, and provide a written explanation as to why Defendant declined to  
25 implement those additional pollution prevention measures. Upon request by Baykeeper, Defendant  
26 agrees to meet and confer in good faith (at the Facility requiring the SWPPP changes, if requested by  
27 Baykeeper) regarding the contents and sufficiency of the SWPPP. Compliance with the SWPPP, as  
28 amended in accordance with this Paragraph, shall, at all times, be a requirement of this Consent Decree.

1 Defendant shall revise the Facilities' SWPPPs if there are any material changes in the Facilities'  
2 operations, including, but not limited to, changes to storm water discharge points or BMPs. These  
3 SWPPP revisions shall occur within thirty (30) days of the changes in operations.

4 **11. Future Storm Water Pollution Prevention Plan Amendments.** Defendant shall provide  
5 Baykeeper with a copy of any amendments to either of the Facilities' SWPPPs made during the Term of  
6 the Consent Decree within ten (10) days of such amendment.

7 **12. Sampling Frequency and Performance Standards.** During the 2017-2018 reporting year,  
8 Defendant shall collect and analyze samples from six (6) QSE from each of the Facilities' discharge  
9 locations, identified in each of the Facilities' SWPPPs, provided that many QSE discharges have  
10 occurred. If sampling test results from the six (6) sampled QSE at each of the Facilities in the 2017-2018  
11 Reporting Year exceed the Table 1 Parameter Limits less than twice for the same parameter at either  
12 Facility, that Facility may elect to only collect and analyze samples from four (4) QSE in the 2018-2019  
13 Reporting Year, from the Sample Points identified in the Facilities' SWPPPs, under this Consent  
14 Decree. If two (2) or more exceedances of the same parameter at either of the Facilities are reported, that  
15 Facility will collect and analyze samples from six (6) QSE, during the 2018-2019 Reporting Year.  
16 During the 2019-2020 and 2020-2021 reporting years, Defendant may elect to only collect and analyze  
17 samples from four (4) QSE from each of the Facilities, at all sampling points identified in each of the  
18 Facilities' SWPPPs, under this Consent Decree. If Defendant receives storm water sampling data  
19 demonstrating an exceedance of a Table 1 Parameter Limit at either of the Facilities during the term of  
20 this Consent Decree, Defendant shall provide Baykeeper with written notice of the exceedance within  
21 (10) days. If Defendant receives storm water sampling data demonstrating two or more exceedances of  
22 the same Table 1 Parameter Limit at either of the Facilities during a single Reporting Year under this  
23 Consent Decree, Defendant shall provide Baykeeper with an Action Plan for that Facility in compliance  
24 with the "Action Plan" requirements set forth below in Paragraph 14 of this Consent Decree.

25 **13. Sampling Parameters.** Each of the storm water samples collected pursuant to Paragraph 12 of  
26 this Consent Decree shall be analyzed for each of the constituents listed in Table 1. With the exception  
27 of pH testing, all storm water analysis shall be done by a laboratory accredited by the State of California.  
28 Samples collected from each of the Facilities shall be delivered to the laboratory as soon as possible to

1 ensure that sample “hold time” is not exceeded. Analytical methods used by the laboratory shall be  
2 adequate to detect the individual constituents at or below the limits specified in Table 1. Sampling  
3 results shall be provided to Baykeeper within fourteen (14) days of Defendant’s receipt of the laboratory  
4 report from each sampling event pursuant to the Notice provisions of Paragraph 39 herein.

5 **14. Action Plan.** Defendant agrees to submit an Action Plan: 1) if required pursuant to Paragraphs 5  
6 and 12, or if Defendant fails to collect and analyze samples from the number of QSE required in  
7 Paragraph 12 above, or if Defendant fails to comply with any other requirements of the Storm Water  
8 Permit, that complies with the following requirements: Defendant shall prepare a detailed, written  
9 statement discussing and describing the exceedances or failure to collect and analyze samples from the  
10 required number of QSE, the possible cause(s) and/or source of the exceedances or failure(s), additional  
11 measures that are designed to address and eliminate the problem and future exceedances or failure(s),  
12 and an expeditious time line for implementing said additional measures (the “Action Plan”). The Action  
13 Plan shall be provided to Baykeeper no later than thirty (30) days after Defendant’s receipt of the sample  
14 results causing two exceedances of the same Table 1 Parameter Limit within a single Reporting Year, or  
15 failure to sample the required number of QSE at the close of any reporting year.

16 **15. Additional Measures.** Such additional measures under an Action Plan, to the extent reasonably  
17 feasible, shall be implemented within sixty (60) days after the due date of the Action Plan. Within thirty  
18 (30) days of implementation, the Facilities’ SWPPPs shall be amended to include all additional BMP  
19 measures designated in the Action Plan.

20 **16. Baykeeper Review of Action Plan(s).** Baykeeper may review and comment on an Action Plan  
21 and suggest any additional pollution prevention measures it believes are appropriate within fifteen (15)  
22 days of receipt of any Action Plan under this Consent Decree; however, Baykeeper’s failure to do so  
23 shall not be deemed to constitute agreement with the proposals set forth in the Action Plan. Defendant  
24 shall not be obligated to perform any of the pollution prevention measures Baykeeper may recommend  
25 (subject to dispute resolution in Paragraphs 23 and 24), but shall give good faith consideration to those  
26 measures, and provide a written explanation as to why Defendant declined to implement those additional  
27 pollution prevention measures. Upon request by Baykeeper, Defendant agrees to meet and confer in  
28

1 good faith (at the Facility requiring the Action Plan, if requested by Baykeeper) regarding the contents  
2 and sufficiency of the Action Plan.

3 **17. Site Inspections.** In addition to any site inspections conducted as part of the settlement process  
4 and the meet-and-confer process concerning an Action Plan as set forth above, Defendant shall permit  
5 representatives of Baykeeper to perform up to two (2) physical inspections at each of the Facilities  
6 during the term of this Agreement. These inspections may be performed by Baykeeper's counsel and  
7 consultants and may include sampling, photographing, and/or videotaping. All sampling shall be  
8 conducted by a qualified sampler, with a split sample provided to both Baykeeper and Defendant at the  
9 time of sampling. Baykeeper shall provide Defendant with a copy of all sampling reports, photographs  
10 and/or video within a reasonable time after the site inspection, not to exceed fourteen (14) days after  
11 Baykeeper's receipt of any sampling reports from split samples, and seven (7) days after the site  
12 inspection, for photographs and/or video. Baykeeper shall provide at least five (5) business days advance  
13 notice of such physical inspection, except that Defendant shall have the right to deny access if  
14 circumstances would make the inspection unduly burdensome and pose significant interference with  
15 business operations or any party/attorney, or the safety of individuals. In such case, Defendant shall  
16 specify at least three (3) dates within the two (2) weeks thereafter upon which a physical inspection by  
17 Baykeeper may proceed. Defendant shall document alterations to each of the Facilities' conditions  
18 related to storm water management during the period between receiving Baykeeper's initial advance  
19 notice and the start of Baykeeper's inspection that Defendant would not otherwise have made but for  
20 receiving notice of Baykeeper's request to conduct physical inspections of the Facilities. The  
21 documentation shall include the date the alterations related to storm water management were planned  
22 and/or scheduled, the date of the issuance of any purchase order and/or maintenance order, if any, for the  
23 alterations, and the date the alterations were implemented. Nothing herein shall be construed to prevent  
24 Defendant from continuing to implement any BMPs identified in the SWPPP during the period prior to  
25 an inspection by Baykeeper or at any time.

26 **18. Defendant Communications with Regional and State Boards.** During the Term of this  
27 Consent Decree, Defendant shall provide Baykeeper with copies of all documents and official  
28 communications submitted to the Regional Board or the State Board concerning BMPs, storm water or  
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1 storm water discharges from the Facilities, or compliance with Storm Water Permit or the Clean Water  
2 Act. These documents and official communications shall include, but are not limited to, all documents  
3 and reports submitted to the Regional Board and/or State Board as required by the Storm Water Permit,  
4 and all official correspondence between the Regional Board or the State Board and the Defendant or  
5 their agents. Such documents and reports shall be provided to Baykeeper pursuant to the Notice  
6 provisions of Paragraph 39 herein contemporaneously with Defendant's transmission of said documents  
7 to the Regional Board or the State Board.

8 **MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS**

9 **19. Mitigation.** As mitigation of the Clean Water Act violations alleged in Baykeeper's Complaint,  
10 Defendant agrees to pay the sum of Thirty-Five Thousand Dollars (\$35,000) to Friends of the Dunes for  
11 projects to improve the environmental habitat and/or water quality in Humboldt Bay or the Humboldt  
12 Bay Watershed. The mitigation payment shall be made directly to Friends of the Dunes and sent to:  
13 Friends of the Dunes, 220 Stamps Ln, Arcata, CA 95521. Friends of the Dunes shall provide notice to  
14 the Parties within ten (10) days of a decision upon when and how the funds will be applied to better the  
15 environmental habitat, ecosystem, and/or water quality, in Humboldt Bay or the Humboldt Bay  
16 Watershed. The payment shall be sent within seven (7) calendar days of the Effective Date.

17 **20. Baykeeper's Litigation Costs.** To partially reimburse Baykeeper for its investigation fees and  
18 costs, expert/consultant fees and costs, reasonable attorneys' fees, and other costs incurred as a result of  
19 investigating and filing the lawsuit, and negotiating this Consent Decree, Defendant shall pay a total of  
20 Eighty Thousand Dollars (\$80,000). The payment shall be made within thirty (30) days of the Effective  
21 Date. The payment shall be made via wire transfer or check, made payable to: "ATA LAW GROUP"  
22 and delivered by overnight delivery, unless payment via wire transfer, to: ATA Law Group, 828 San  
23 Pablo Ave., Ste. 115B, Albany, CA 94706.

24 **21. Compliance Monitoring and Oversight.** Defendant agrees to partially defray Baykeeper's  
25 reasonable investigative, expert, consultant and attorneys' fees and costs associated with monitoring of  
26 Defendant's compliance with this Consent Decree in the amount of Fourteen Thousand Dollars  
27 (\$14,000). Payment shall be made within ten (10) days after the Effective Date. Compliance monitoring  
28 activities may include, but shall not be limited to, reasonable investigative, expert, consultant and

attorneys' fees and costs, site inspections, review of water quality sampling reports, review of annual reports, discussions with representatives of Defendant concerning any Action Plan(s) referenced above, potential changes to compliance sampling and analysis, and compliance-related activities. The payment shall be made via wire transfer or check, made payable to: "ATA LAW GROUP" and delivered by overnight delivery, unless payment via wire transfer, to: ATA Law Group, 828 San Pablo Ave., Ste. 115B, Albany, CA 94706.

## **DISPUTE RESOLUTION**

**22. Jurisdiction of the Court.** The Court shall retain jurisdiction over this matter for the life of the Consent Decree for the purposes of enforcing its terms and conditions, and adjudicating all disputes among the Settling Parties that may arise under the provisions of this Consent Decree. The Court shall have the authority to enforce this Consent Decree with all available legal and equitable remedies, including contempt. Within five (5) days of the Effective Date, the Parties shall file with the Court a Stipulation and Order providing that the Complaint and all claims therein shall be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2).

**23. Meet and Confer.** If a dispute under this Consent Decree arises or the Parties believe that a breach of this Consent Decree has occurred, the Settling Parties agree to meet and confer:

**23.1** A Party to this Consent Decree shall invoke the dispute resolution procedures of this Section by notifying the other Parties of the matter(s) in dispute. The Parties shall schedule a meet and confer (either telephonically or in person) within ten (10) days from the date of the notice. The Parties may elect to extend this time in an effort to resolve the dispute without mediation or court intervention.

**23.2** If the Parties fail to meet and confer, or cannot resolve a dispute through the informal meet and confer process, after at least seven (7) days have passed after the meet-and-confer occurred or should have occurred, either Party shall be entitled to all rights and remedies under the law, including filing a motion with the District Court of California, Northern District. The Parties shall be entitled to seek fees and costs incurred in any such motion, and such fees and costs shall be awarded pursuant to the provisions set forth in Section 505(d) of the Clean Water Act.



1       **23.3**       The Parties shall be entitled to seek fees and costs incurred in any such dispute resolution  
2       procedure or action, to remedy the alleged breach(es) of the Consent Decree, pursuant to the  
3       provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. §§ 1319, and 1365(d), and  
4       applicable case law interpreting such provisions.

5       **MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

6       **24. Baykeeper's Waiver and Release.** Baykeeper, on its own behalf and on behalf of its officers,  
7       directors, employees, parents, subsidiaries, and each of their successors and assigns releases Defendant,  
8       their officers, directors, employees, members, parents, subsidiaries, affiliates, successors or assigns,  
9       agents, attorneys and other representatives, from and waives all claims raised in the 60-Day Notice  
10      and/or the Complaint, including all claims for fees (including fees of attorneys, experts, and others),  
11      costs, expenses, or any other sum incurred or claimed or which could have been claimed for matters  
12      included in the 60-Day Notice and/or the Complaint up to the Effective Date.

13      **25. Defendant's Waiver and Release of Baykeeper.** Defendant, on their own behalf and on behalf  
14      of their officers, directors, employees, members, parents, subsidiaries, affiliates, or their successors or  
15      assigns release Baykeeper and its officers, directors, employees, members, parents, subsidiaries, and  
16      affiliates, and each of their successors and assigns from, and waive all claims which arise from or  
17      pertain to, the 60-Day Notice and/or the Complaint, including all claims for fees (including fees of  
18      attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed or which could  
19      have been claimed for matters included in the 60-Day Notice and/or the Complaint up to the Effective  
20      Date.

21      **MISCELLANEOUS PROVISIONS**

22      **26. No Admission of Liability.** Neither this Consent Decree, the implementation of additional  
23      BMPs or any payment pursuant to the Consent Decree shall constitute or be construed as a finding,  
24      admission, or acknowledgement of any fact, law, rule, or regulation. Defendant maintain and reserve all  
25      defenses they may have to any alleged violations that may be raised in the future.

26      **27. Submission of Consent Decree to DOJ.** After agreement of the Parties to this proposed Consent  
27      Decree, Baykeeper will submit this Consent Decree to the United States Department of Justice and the  
28      national and Region IX offices of the United States Environmental Protection Agency for the statutory



1 review period pursuant to 33 U.S.C. § 1365(c) of at least 45 days prior to the submittal of this Consent  
2 Decree to the Court for entry. In the event that the Federal Agencies object to entry of this Consent  
3 Decree, the Parties agree to meet and confer to attempt to resolve the issue(s) raised by the Federal  
4 Agencies within thirty (30) days.

5 **28. Early Termination.** If Defendant should attempt to cease industrial operations at either of the  
6 Facilities and file a Notice of Termination (“NOT”) under the Industrial Storm Water Permit prior to the  
7 termination date of this Consent Decree, Defendant shall send Baykeeper a copy of the proposed NOT  
8 thirty (30) days prior to its submittal to the Regional Water Board. Baykeeper reserves all rights to  
9 comment on the proposed NOT and take any necessary action before the Regional Water Board to  
10 dispute the validity of the NOT. Should the NOT be approved by the Regional Water Board, within ten  
11 (10) days of the Regional Water Board’s approval Defendant shall notify Baykeeper in writing of the  
12 approval and remit all outstanding payments, including stipulated payments, to Baykeeper. In the event  
13 a new successor or assign continues industrial operations at the site and assumes responsibility for  
14 implementation of this Consent Decree pursuant to Paragraph 38, Defendant shall notify Baykeeper  
15 within ten (10) days of the transition.

16 **29. Execution in Counterparts and Signatures.** The Consent Decree may be executed in one of  
17 more counterparts, which, taken together, shall constitute one original document. The Parties’ signatures  
18 to this Consent Decree may be electronic or original, and whether transmitted by courier, mail, email or  
19 facsimile, shall be deemed binding.

20 **30. Construction.** The language in all parts of this Consent Decree shall be construed according to  
21 its plain and ordinary meaning, except as to those terms defined in the Storm Water Permit, the Clean  
22 Water Act, or specifically herein. The captions and Paragraph headings used in this Consent Decree are  
23 for reference only and shall not affect the construction of this Consent Decree.

24 **31. Authority to Sign.** The undersigned representatives for Baykeeper and Defendant certify that  
25 he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of  
26 this Consent Decree, which have been read, understood and agreed to.

1       **32. Integrated Consent Decree.** All agreements, covenants, representations and warranties, express  
2 or implied, oral or written, of the Parties concerning the subject matter of this Consent Decree are  
3 contained herein.

4       **33. Severability.** In the event that any of the provisions of this Consent Decree are held by a court to  
5 be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

6       **34. Choice of Law.** This Consent Decree shall be governed by the laws of the United States or,  
7 where applicable, the laws of the State of California.

8       **35. Full Settlement.** This Consent Decree constitutes a full and final settlement of this matter.

9       **36. Negotiated Agreement.** The Parties have negotiated this Consent Decree, and agree that it shall  
10 not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared  
11 this Consent Decree, and any uncertainty and ambiguity shall not be interpreted against any one party.

12       **37. Modification of the Agreement.** This Consent Decree, and any provisions herein, may not be  
13 changed, waived, or discharged unless by a written instrument signed by each of the Parties.

14       **38. Assignment.** Subject only to the express restrictions contained in this Consent Decree, all of the  
15 rights, duties and obligations contained in this Consent Decree shall inure to the benefit of and be  
16 binding upon the Parties, and their successors and assigns.

17       **39. Notice.** Unless otherwise stipulated to by the receiving party, any notices or documents required  
18 or provided for by this Consent Agreement or related thereto that are to be provided to Baykeeper  
19 pursuant to this Consent Agreement shall be sent via electronic mail to the email addresses listed below:

20  
21       Jennifer Kalt  
22       Director, Humboldt Baykeeper  
23       600 F Street, Suite 3 #810,  
24       Arcata, CA 95521  
25       jkalt@humbolddbaykeeper.org

21       Anthony M. Barnes  
22       Jason R. Flanders  
23       Aqua Terra Aeris Law Group LLP  
24       828 San Pablo Ave., Ste. 115B  
25       Albany, CA 94706  
26       Phone: (415) 326-3173  
27       Email: amb@atalawgroup.com

26       Any notices or documents required or provided for by this Consent Agreement or related thereto  
27 that are to be provided to Defendant pursuant to this Consent Agreement shall be sent via electronic mail  
28 to the email addresses listed below:

1  
2 Neal Ewald  
3 Senior Vice President  
4 Green Diamond Resource Company  
5 California Redwood Company  
6 P.O. Box 68  
7 Korb, CA 95550  
8 (707) 668-4400  
9 Email: newald@greendiamond.com

Christopher J. Carr  
Morrison Foerster LLP  
425 Market St # 30  
San Francisco, CA 94105  
Phone: (415) 268-7246  
Email: ccarr@mofo.com

Each Party shall promptly notify all other Parties of any change in the above-listed contact information.

40. **Force Majeure.** No Party shall be considered to be in default in the performance of any of its obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is any circumstances beyond the Party's reasonable control, including, without limitation, any act of God, war, fire, earthquake, flood, and restraint by court order or public authority. A Force Majeure event does not include normal inclement weather, such as anything less than or equal to a 100 year/24-hour storm event, or inability to pay. Any Party seeking to rely upon this Paragraph shall have the burden of establishing that it could not reasonably have been expected to avoid, and which by exercise of due diligence has been unable to overcome, the Force Majeure.


The Parties hereto enter into this Consent Decree, Order and Final Judgment and submit it to the Court for its approval and entry as a final judgment.

APPROVED AS TO CONTENT

Dated: 7/5, 2017

By:   
Jennifer Kall, Director  
Humboldt Baykeeper

Dated: 7/6, 2017


By:   
Neal Ewald, Senior Vice President  
California Redwood Company

[Proposed] CONSENT DECREE

1 APPROVED AS TO FORM


AQUA TERRA AERIS LAW GROUP

2  
3 Dated: July 6, 2017, 2017

By:   
Anthony M. Barnes  
Attorneys for Plaintiff

6 MORRISON FOERSTER LLP

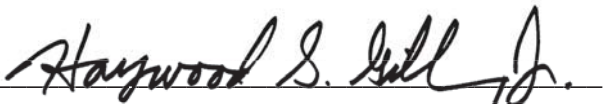
7  
8 Dated: July 10, 2017

By:   
Christopher J. Carr  
Attorneys for Defendant

10  
11 Good cause appearing, IT IS SO ORDERED.

12  
13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15  
16 Dated: September 6, 2017

  
HONORABLE HAYWOOD S. GILLIAM, JR.